

## TRADITIONAL JUDICIAL SYSTEM IN URHOBOLAND

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### **Abstract**

*The aim of this study is to examine the traditional judicial system in Urhoboland. Also, this study highlights the traditional administration in the precolonial and colonial period. The essence of the study study is to mirror the changes and impacts of modernity in the Urhobo society particularly the judicial system with the advent of Colonialism by the British. A descriptive method was used to reflect the detail information about the traditional judicial system in urhobo land. The study is a discourse on the Urhobo social system, role of traditional institutions in Urhobo judicial system, the courts and the applicable laws as well as traditional administration of justice. The judicial system and practices was, and still regulates the behaviour of people to maintain social order. The system requires different types of courts as instruments for the resolution of conflict and administration of justice. These courts are inclusive of the Upper Court (Egware r'Orho) and Lower Court (Egware r'Egodo): Court of the Family (Egware r'Ekru or Orua): Court of the Quarter(Egware r'Uduvwu): Court of the Village(Egware r'Okor or Ighwre): Court of the Youths (Egware r'Ighele): Court of the Women Folk(Egware r'Eghweya) and Special Court Against Theft(Egware r'Idigbu. However, the highest body which is called in Ovie-in-Council (Ovie -King, Otota- Spokesman and selected Chiefs) take decision on crucial and major issues. In contemporary Urhobo society, both the traditional judicial system functions side by side with the English*

### **Introduction**

A lot has been reported on how several institutions in Nigeria conferred hegemony on rulers who are inclusive of traditional rulers both in pre-colonial and colonial period <sup>1</sup>. It is reported that justice is a cardinal pillar of both the traditional judicial and legal systems in Nigeria. The practice of using traditional rulers for disputes settlement has been in existence in indigenous communities in Nigeria before the advent of the British legal system of court litigation. Prior to the colonial era, traditional judicial system (customary law) operated freely in its areas of influence as a complete and independent legal system. There were also in existence as a separate, independent and organized dispute resolution system based on the customary law of each community. Generally, this system of dispute resolution is referred to as the traditional judicial system or customary

arbitration tribunals and they are constituted by transitional leaders and elders of the community. It was reported that traditional rulers enjoy respect and confidence from the public because the legal systems are based upon the local tradition, culture, history and religion <sup>2</sup>. The traditional judicial system derives its authority or power from the custom and tradition of the community which are accepted by the members as binding on community<sup>3</sup>. According to Nwocha, the traditional judicial system is recognized under the Nigeria law as a valid means of dispute resolution mechanism. Therefore, this study aims to address the traditional judicial system in the Urhobo land. The study highlights the traditional justice administration in the pre colonial and colonial Urhobo land. The essence is to mirror the changes and impacts of modernity in Urhobo society, particularly, the judicial system with the advent of Colonialism by the British.

### **The Urhobo ethnic group in Nigeria**

The Urhobo people live in Urhobo land in Delta State, in the Niger Delta region of Nigeria. The and Ughelli South, Ethiope East and Ethiope West, Okpe and Sapele, Udu and Uvwie as well as part of Warri South local government area. There are Urhobo speaking people in Patani and Sagbama local government areas of Delta and Bayelsa States respectively. In addition, there are also Urhobo speaking people in Okitikpukpa in Ondo State <sup>4</sup>. The Urhobo ethnic nationality is made up of 23 kingdoms that share ancestral and cultural affinities as well as beliefs whose body of knowledge among other things comprise the Urhobo traditional judicial system. In alphabetical order, the cultural unit/clans include; Agbarha-Ame, Agbarha-Otor, Agbarho, Agbon, Arhavwarien, Avwraka (Abraka), Ephron, Evwreni, Eghwu, Idjerhe, Oghara, Ogor, Okere-Urhobo, Okparabe, Okpe, Olomu, Orogun, Udu, Ughelli, Ughievwen, Uvwie and Ughwerun <sup>5</sup>. However, in 2007 a new cultural unit was carved out of Idjerhe clan which signaled the birth of the 23<sup>rd</sup> autonomous Mosogar kingdom . The Urhobo people at the town level achieve political positions through age and leadership capacity within the age grade system under the government of elders (gerontocracy). In Urhobo land, towns or communities are internally autonomous in their government but they remain under the ruler ship of the traditional ruler of the kingdom <sup>6</sup>. The eldest person in the community is known as Okpako Orere or Okarorho and he is assisted by an Otota (Spokesman). In addition, there is the council of elders who enact laws as advised by the age-grade leaders while the senior age grade leaders execute orders on the instruction of the elders-in-council <sup>7</sup>.

This flow of structure and traditional political positions is a phenomenon through which a distinct traditional judicial system has evolved in Urhobo communities. Otiye said that it is imperative to emphasize that gerontocracy is not the only system of government that is operational in Urhobo land. In some of the Kingdoms, there is a combination of gerontocracy (Okarorho/Okpako) and plutocracy where by the rich and the wealthy are made to head their kingdoms. It is the plutocratic practices in some kingdoms that gave rise to titles like the Osuivie(Leader of Kings) of Agbarho Kingdom: the Ohworode(Big man) of Olomu Kingdom and the Okobaro (The Man at the front) of Ughievwen Kingdom: whereas, the former and the latter, being traditional rulers should be known and addressed as Ovie(King) <sup>8</sup>.

Furthermore, it is important to clarify, that the existence of these structures and institutions vary from one community and kingdom to another just as there are differences in terminology and titles. However, the variation in these structures and institutions as well as titles has not in any way diminished their important contribution to the traditional judicial system in Urhoboland. As a matter of fact, such traditional structures and institutions have been created to function in reality with the prevailing circumstances in a given political kingdom<sup>6</sup>. For example, in Idjerhe and Mosogar kingdoms, the term Ogwa(hall) in most cases goes together with Edion (Ancestral Shrine) and is thus pronounced Ogwaedion(hall of ancestral shrine). Similarly, in other Urhobo kingdoms such as Olomu, Ughelli and Ughievwen, the term Ogwa(hall) connotes both the place where the elders meet as well as that of the ancestral shrine. However, the most important thing about the usage is that the Ogwa(hall) is a temple of justice. The importance of the traditional judicial system lies in its ability to dispense justice <sup>9</sup>.

## **Traditional Institutions in Urhobo Judicial System**

### **Ovie-in-Council**

The Ovie-in-Council consists of the King (Ovie), the Otota (Spokesman) and selected Chiefs which the King considers to be his confidants. Membership of the Ovie-in-Council is drawn from Oguedion (chieftaincy title holders in the Kingdom) and the Ruling Houses. It is the highest body that takes decision on crucial and major issues: it gives approval before anything is done in the Kingdom. In terms of conflict resolution, the Ovie-in-Council is the highest arbiter in each kingdom <sup>10</sup>.

### **Oguedion**

The Oguedion is the council or committee of persons conferred with Chieftaincy titles and Elders, it is in every community. The term Oguedion is derived from

two words: Ogwa(hall or building) that accommodates Edion (Ancestral Shrine). The Edion is the Ancestral shrines that have been preserved for ages. It is the collection of staffs (Opho Sticks) with rounded cowries of the different most elderly males in each community. All staffs (Opho) of the most elderly male, living or dead in the community are kept in a basket and brought to the front of the current most Elderly Male and the Spokes persons during the meeting of Council of Chiefs and Elders <sup>11</sup>. People reverence the presence of the Edion, it instills fear and makes people to speak the truth during dispute. The most senior chief who plays a vital role is determined by the number of years of conferment of chieftaincy title. The role of the Oguedion in conflict prevention and resolution includes assigning quarters to the warriors (inotu) for defence. It also handle trials as jury and prosecutors and verdicts are in any judgment are pronounced either by the senior or junior spokesman. In view of the importance of the Ogwa(hall), there is town hall(Ogwa r'Orere) and family hall(Ogwa r'Ekru/Orua) <sup>12</sup>.

### **Inotu (Leaders of the Different Age Grades)**

They are the war lords and community guards who defend the community against intruders. They messengers to the Council of Chiefs, they supervise labour and maintain peace as well as order.

### **Ighene(Age-Grade)**

The age grade is organized for the youths of 15-30 years and they supply labour force to the inotu and participate in community task such as digging of wells, clearing of market and building sites among others.

### **Ewheya(Council of Married Women)**

This is the council of married women of 14 or 20 and 40 or 50 years: married from within the town and outside and it is headed by the most elderly married woman and a spokesperson (Otota) in the community who act on behalf of other women <sup>7</sup>. Their role includes settlement of disputes among women, keeping watch over women in matters of morality and keeping some of the cultural and traditional practices in the community, carrying out the rites of purification when a woman dies during child birth or of certain illness or diseases: rites required to induce fertility of women and crops <sup>13</sup>. Otite noted that they also ensure that domestic animals(goats, pigs and cows) do not destroy farm crops and if this happens, the women would organize a protest to the community or town council. However, the refusal of the council to act incurs the wrath of the women which they display by relocating from their matrimonial homes to the nearby

community<sup>14</sup>. The women would only return to their matrimonial homes only when the elders plead with them and agreed to bear the financial cost of their upkeep for the period they were away from their homes. The council also referred cases that cannot be settled among themselves to the council of chiefs<sup>15</sup>.

### **Emete**

These are daughters of the community who were once married but they are no longer in marriage either due to divorce or death as result of which they had to return to their father's town. Their role in the community includes settlement of disputes and maintenance of sites being used as shrines as well as carrying out designated sacrifices.

### **Aghwoghwo(Announcer)**

The town crier/announcer is saddled with the responsibility of disseminating information in any community

### **Ikon (Messenger)**

Iko is name for messenger in Urhobo and he is saddled with the responsibility of running errands on behalf of the community

### **Traditional Laws in Urhobo Judicial System**

The laws in Urhobo land are not codified or written: the determination of cases brought before any jury therefore depends on precedence. The laws are connected or related to certain socio-economic matters as earlier mentioned.

#### **i) Law on Marital Matters**

These are matters or agreements between husbands and wives as well as families that contracted marriage. This agreement prescribes the bride wealth (not bride price) to be paid and it is something given like a symbol to show concern and sincerity and to secure the marriage; ways of dissolution of the marriage if it becomes necessary, and the responsibilities of the couples. A man fulfils the condition of marriage when he does the necessary rites such as "judi kuotor" (provision of gin and kola nut to be used to pray for the groom and the bride<sup>18</sup>. If a man has not done this on a woman, he does not claim rights over a woman neither can he claim damages from another man for infidelity on the part of the woman. There are also laws against adultery and holding of married women on the wrist.

## **ii) Law of Libel and Defamation of Character**

This is known as “obarovwen” (lie against someone). It is the false accusation of a person of any crime. False information is also considered as part of this law.

## **iii) Law Against Stealing**

There are two types of stealing: Uji and Eriacho.

**Uji:** The first one uji, is the general word for stealing especially when a person keeps for him/herself an object or money that does not belong to him. The uji (stealing) also describes stealing from a person without his knowledge and with the intention of not returning the stolen properties.

**Eriacho:** This stealing by trick. It refers to when a person keeps for him/herself any property/ object or money that was supposed to pass on to another person

## **iv) Law of Contract**

This involves agreement on transfer of property in outright exchange for money known as “ede”(purchase). There is also the temporary exchange of property for money or its equivalent called “Oviewen” during which a definite time is imposed within which a pledge is redeemed. Where a mortgagor fails to redeem his/her property, the children can do so at a later date as long as the property to be redeemed is still in existence.

## **V) Law Concerning Murder**

This is known as urhi r’ozighe and it is the greatest crime in Urhobo land as it were in other lands. The alleged culprit is arraigned before the Council of Chiefs (Oguedion) and Elders (Ekpako). Analytically, care is taken to differentiate between “intentional” murder and “accidental” murder. The settlement of murder is jungle justice

## **Urhobo Judicial System and Practices**

The judicial system and practices was, and it is still expected to regulate the behaviour of people to maintain social order. Social order implies the existence of restraint, mutuality, reciprocity and interdependence. This is in line with the social order of any society to prevent disorder<sup>19</sup>. The indigenous judicial practice in pre-colonial times vis-à-vis the English legal or judicial system; revolves round the social structure that runs thus: There is the Orho(Clan) under which there is Oko or Ubrorho(sub Clan) followed by Uduvwu(Quarter), next is the

Orua(Family) followed by or Egodo(Compound) which is a unit of a nuclear family <sup>20</sup>. The courts and court processes are tied to the above pattern or structures. Cases were decided (are still decided) on the basis of truth. Where truth is not clearly ascertained, the litigants are referred to the ancestral shrines (Orha or Edion) of the Orho or Ubrorho, Uduvwu, Orua or Egodo and some times, to a deity to give verdict <sup>21</sup>. The judicial practices in any Urhobo community are based on principles that are basic to Urhobo jurisprudence which among other things are that:

- i). Any Jury should listen to both parties in any litigation before judgment is delivered
- ii) Any Jury should watch for the truth and good conduct rather than technical presentation of issues.

### **Traditional Courts in Urhobo Judicial System**

The nature of the conflict profile in Urhobo communities necessitated the availability of different types of courts as instruments for conflict resolution. Such conflict profile provides a brief characterization of the context within which a particular conflict will be resolved. The Courts include Upper Court (Egware r'Orho) and Lower Court (Egware r'Egodo): Court of the Family (Egware r'Ekru or Orua): Court of the Quarter(Egware r'Uduvwu): Court of the Village(Egware r'Okoko or Ighwre): Court of the Youths (Egware r'Ighele): Court of the Women Folk(Egware r'Eghweya) and Special Court Against Theft(Egware r'Idigbu) <sup>22</sup>

**Upper Court (Egware r'Orho):** The upper court is the court of the entire community (Egware r'Orho). It is presided over by the Council of Chiefs and Elders but the Jury comprise the most Elderly male, the senior and junior spokesman and all Chiefs present at the Ogwa(Hall). This was the highest court in every kingdom of the Urhobo nation before the advent of the British.

**Lower Court (Egware r'Egodo):** The lower court is that of the immediate family and it is also known as Compound Court: it is headed by the head of the family and it had jurisdiction over family matters.

**Court of the Family (Egware r'Ekru or Orua):** The Jury is made up of the most senior extended family members or heads of nuclear family members who are essentially elderly males. It had jurisdiction over both nuclear and extended family matters

**Court of the Quarter (Egware r'Uduvwu):** This Court is made up of senior males in the quarter and it is presided over by the most elderly in the quarter. The jurisdiction of his court was limited to the quarter.

**Court of the Village (Egware r'Okoko or Ighwre):** This court is constituted by Chiefs and Elders in each village and it is presided over by the most senior male. Very serious and sensitive issues like murder, accidental killing, arson and witchcraft were often referred to the Ovie-in-Council

**Court of Youths (Egware r'Ighele):** This court is constituted by most senior youth leaders in the order of seniority. Some sensitive decisions are referred to the upper court. The group also played the role of helping people to obtain their debts and this was done by intimidating the debtor and destroying his property including goat, until the debts were repaid. If large sums of money were involved, it led to either the debtor or the child being sold into slavery. It must be emphasized that the property of the debtor or him/herself were always in the custody of the creditor until they were redeemed. If not redeemed, the creditor would sell the debtor into slavery. This group that is also known by different names in different kingdoms: for example the group is called Otuakpa among the Uvwie, Otuada among Agbon and Okpe, and Igbun-Oto among the Ughievwen<sup>23</sup>.

**Court of the Women Folk(Egware r'Eghweya):** According to Otite these are married women of between 14-20 and 40-50 years who constitute the most powerful and largest group, married from within and outside the community. It is a platform on which disputes within the folk are settled and the usual method is that the aggrieved person would summon the aggressor before the leadership of the court presided over by the Eldest female (Okpako r'Eghweya) and assisted by the Otota (Spokesperson). In pre-colonial Urhobo society, the Eldest woman among all the wives in the community automatically becomes Okpak o r'Eweya(Eldest of the Wives) and ably assisted by an outspoken woman as the Spokesperson(Otota). However, post-colonial practices seem to have come with the concept of electing the leadership of the women folk.

**Special Court Against Theft (Egware r'Idigbu):** This is the court of the middle aged men (intermediate age-grade) who are essentially concerned with theft cases in which culprits are made to be nude if found guilty. The latter is paraded to the court for sentence<sup>24</sup>

## **Traditional Administration of Justice in Urhobo Land**



Justice administration is an aspect of government that draws a sharp distinction between civil and criminal cases among the Urhobo people. Civil cases include debts, land dispute, stealing, false information/lies, chieftaincy dispute and adultery among others: while criminal cases are murder, armed robbery, abduction, and arson. There are detailed procedures which ensured that justice is properly dispensed and that parties concerned in any dispute were satisfied . This was a universally acceptable method of conflict resolution as far as the Urhobo people were concerned. Traditional administration of justice is part of the traditional judicial system in Urhobo land is done through retribution and modification mechanisms. The retribution mechanism involves the application of the law and the imposition of sanction on a given offender. Modification on the other hand, involves the use of artifacts and rituals to settle disputes. The retribution mechanism is used in resolving inter communal conflicts while modification is used in resolving social conflicts <sup>25</sup>.

Another mechanism for administering justice is trial by ordeal. Omoniyi said it is a process by which an accused/suspect is made to perform a specific task to determine his/her culpability or otherwise and it takes several forms . Trial by ordeal is used for supernatural and “abstract” crimes such as witch craft and wizardry that could not be easily identified by human knowledge. According to Oghi, the commonest method of trial by ordeal among the Isoko and Urhobo people was the drinking of highly poisonous substance, especially concoctions made from sasswood . Other methods of trial by ordeal include swimming across a “dangerous” river and dipping one’s hand in a boiling cauldron, especially palm oil. It was a kind of “one stop judgment” that did not allow appeal because it was believed that the infallible gods had adjudicated and nothing more could be done to alter it. Furthermore, corroborating the views mentioned above, Orite outlined other methods of trial by ordeal such as requesting the accused to rub some medical concoction on his hand before being ordered to pick cowries from the bottom of a boiling water or oil and the suspect was proved guilty if his hands was blistered <sup>26</sup>. Another ordeal is swearing by one or two shrines considered to be the most powerful and agreed to by the parties to an offence of dispute. Both parties would either swear before one shrine, if unanimously accepted, or swore before the other’s specified shrine, asking the super natural power and fountain of justice represented by the shrine to kill any of them who was untruthful in a particular dispute. Judgment and verdicts were enforced by community messengers, age-grade leader and the leader of the executioners.

The procedure for the trial of criminal cases is brief: the leader of the town detectives or an elder would present the case before the court on behalf of the town. Since any offence committed against the community is generally regarded as a crime, it is the duty of everyone to assist in reporting offenders. Such report must be made to any elder on the spot: the town's eldest man, or to the detectives or the police officers of that town. In the case of violent crimes like murder and robbery; any person on the spot is expected to raise the alarm, call for assistance to apprehend the offender. In some instances, town detectives are requested by the elders to carry out "by force arrest" of recalcitrant criminal(s) and such offender(s) must be arraigned before the town elders. It should be noted that the town detectives are appointed from the rank and file of the age-grades and they detain offenders in the house of their leader or a chief. Trial days are usually market days during which the offender will be brought out for trial. As regards criminals caught in action, they can hardly defend themselves in which case, the town courts quickly deliberate on the appropriate settlement term. However, if the criminal insist on being innocent, the trial would assume a much longer process but where wilful murder is confirm, jungle justice verdict is passed.<sup>27</sup>

The trial of a civil offender in the town court is kick started by the town spokesman who greets attendants and announces the purpose of meeting. He summarizes the alleged offence or the elder presents and would request the complainant to outline the facts of the matter and name his witnesses. Unlike the Western Court procedures where Lawyers do the cross examination, the defendant cross examines the complainant in the traditional Courts of the Urhobo people. Even when questions are asked, it is the town's Spokesman that can ask questions first, followed by the ward Spokesmen and thereafter, elders would cross examine the complainant. If the defendant accepts guilt upon being asked, "guilty or not guilty" the town court would roll out the terms of settlement and it is usually restitution and compensation. However, if the defendant did not accept guilt, he will be given an opportunity to question the witnesses of the complainant. Similarly, the witnesses of the defendant are invited into the court to share their opinion on the nature of the offence and this is followed by questions and, at the same time, the complainant is given another opportunity to question the witnesses of the defendant. At this stage, the complainant and defendant, as well as their witnesses, would excuse the court. Elders would deliberate briefly and openly announce their findings as well as terms of settlement depending on the strength of the evidence. This is similar to

contemporary judicial practice where Judges would go for break to enable the jury reach a consensus before judgment is delivered. In complicated and delicate cases, the elders go outside the court hall beyond the hearing of spectators into a brief and private meeting. Though there may be divergent views on a case, such differences were resolved through majority point of view that arose from free and orderly discussion <sup>28</sup>.

For criminal cases, murder or homicide committed is immediately reported to the oldest man or Chief in the community where the crime was committed. The latter would instruct the affected age-grade leader and the leader of the local group of executioners to arrest the suspect/offender and put him in custody under the care of the senior age-grade leader. An emergency but thorough investigation is carried out: while the community and town council/court contacts the King and younger age-grade officers were invited to witness the trial. It should be noted that cases of murder/homicide, robbery, burglary or other violent crimes were regarded as offences against the entire kingdom because they are likely to disrupt collective existence. Death penalty is usually passed on murderers. All of the trial procedures as mentioned above are carefully utilized to ascertain the veracity of claims and counter claims before judgment is delivered by the jury. The decision of the jury is always announced by the Spokesman. <sup>29</sup>

Spectators played a role in the course of trials whether invited or uninvited because a popular case draws sympathizers and spectators from the wards in the town. Similarly, villages whose collective and individual members' interests are being threatened do attend such trials in solidarity. Spectators would react with echoes of approval or disapproval to true or false statements. Hissing, frowning or open voice reaction to what is considered to be a lie does not lead to pandemonium. This mass participation during trials was also psychological and satisfactory in that it activated the interrelated and complimentary role of both the elders and younger members of the age-grade organization. In Furtherance of the traditional administration of justice, Diakparomre opined that conflicts could be resolved by offering sacrifices to the relevant deities through the use of artifacts and rituals. For instance, he said the inability of a man to measure up in his chosen career or responsibilities that are ascribed by the society, depicts him as a failure (social conflict). Consequently, such individual will not be given any important role to play in the society. This type of social conflict is assumed to have its origin in pre-destiny (Urhievwe) and it is the guardian spirit of an Urhobo and the controller of the destiny of individuals. In order to remedy the

situation, an Urhievwe will be formalized on wood as human figure's head because the head is believed to be the totality of the human being essence. At the same time, sometimes, the Urhievwe is also rendered on a wood as full human figure and thereafter libations and sacrifices are made to spiritually correct the anomaly<sup>30</sup>.

Another type of conflict resolution mechanism according to Diakparomre is the use of diplomacy and propitiations to resolve social conflicts such as adultery. In Urhobo land, like most other African communities, sleeping with another man's wife is a taboo (Egha), and if that happens, it must be carefully handled using traditional precedence. Diplomacy involves raising a team of elders (initiated by the offender's family) to shuttle between the offender and the family of offended (husband) for the purpose of settling dispute. In propitiations, artifacts and rituals are involved in making intercessions before the ancestors of the offended party. If the act of adultery is concealed and propitiations are not made, the ancestor of the offended husband intervenes by inflicting the adulterous woman with "gem disease". It is the type of mysterious ailment that makes the hands, feet and stomach to swell without a known cause. When this happens, the alleged adulterous woman must own up and thereafter necessary propitiations are made to the husband's ancestors. There are many types of social conflicts because the Urhobo ethnic nationality considers actions, behaviours and situations like falsehood, stealing, misappropriation of collectively owned resources, oppression, bewitching, adultery, cheating, poisoning, blackmailing, incest and recalcitrant to elders as unacceptable deviant conduct that engender social conflict<sup>31</sup>.

## **Conclusion**

The study examines the traditional judicial system in Urhobo land by discussing Urhobo social system, the institutions, laws, courts and mechanisms among the people. As peace loving people, the Urhobos acknowledge the importance of a peaceful society for socio-economic and political activities to thrive. In that regard, there are traditional socio-political institutions that are meant to oil the wheel of traditional judicial system for ease of administration of justice. In the same vein, the Urhobo ethnic nationality has developed traditional judicial system that evolved traditional jurisprudence that encompasses traditional laws and courts in various Urhobo Communities. The availability of different courts and laws served as institutions and mechanism for traditional administration of justice as a means of dispensing justice. Be that as it may, there

are areas of convergence and divergence of the Knowledge indigenous judiciary and Western judicial system. It is the considered opinion of this paper that Western judicial mechanisms should be domesticated before they could be used to dispense justice in Urhobo land. Furthermore, appropriate models should be built from cultural resources and implicit knowledge to ensure their relevance and workability. In transferring judicial techniques from one setting to another, the cultural views and values as well as practices must be given utmost consideration.

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